

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ILIA ZAVIALOV,

Civil Case No. 10-507-KI

Plaintiff,

OPINION AND ORDER

vs.

JANET NAPOLITANO, Secretary of the
Department of Homeland Security; **ANNE
CORSANO**, Portland District Director of the
United States Citizenship and Immigration
Services, **ALEJANDRO MAYORKAS**, Director,
United States Citizenship and Immigration
Services; **ROBERT MUELLER**, Director of
the Federal Bureau of Investigation; **OFFICER
MATTHEW FENSKE**, Interviewing and Case #
NBC*000613799 Officer,

Defendants.

Ilia Zavialov
910 Harbour Drive #410
Portland, Oregon 97217

Pro Se Plaintiff

Dwight C. Holton
United States Attorney
District of Oregon
James E. Cox, Jr.
Assistant United States Attorney
1000 SW Third Avenue, Suite 600
Portland, Oregon 97204-2902

Attorneys for Defendants

KING, Judge:

Plaintiff Ilia Zavialov filed this action seeking a hearing concerning the failure of the United States Citizenship & Immigration Services (“USCIS”) to adjudicate his naturalization application in a timely manner. Before the court is Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction and Improper Venue (#7).

DISCUSSION

Zavialov filed this action under 8 U.S.C. § 1447(b), which states:

If there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.

Defendants move to dismiss this action for lack of subject matter jurisdiction. They argue that Zavialov lives in Vancouver, Washington, which is in the Western District of Washington. The act allows an applicant to apply “to the United States district court for the district in which the applicant resides for a hearing on the matter.” Id. Defendants thus claim that this court, which is in the District of Oregon, lacks subject matter jurisdiction to hear the case.

Zavialov responds that he also has a residence in Portland, Oregon which enables him to be closer to his business in Portland. He asks the court to retain jurisdiction rather than make him start over with new defense counsel in Washington.

A person may certainly have more than one home. When Zavialov filed this case, he gave his Vancouver, Washington address to the court as his contact information. Zavialov also used his Vancouver, Washington address when he applied for naturalization and he was examined at the USCIS office in Seattle, Washington. Moreover, Zavialov filed an identical action in the United States District Court for the Western District of Washington on July 2, 2010 after he was contacted by defense counsel about the issue.

The plaintiff has the burden of proving subject matter jurisdiction if defendant challenges jurisdiction in a motion to dismiss under Federal Rule of Procedure 12(b)(1). Kingman Reef Atoll Invs., L.L.C. v. United States, 541 F.3d 1189, 1197 (9th Cir. 2008). For purposes of this action, I find that Zavialov resides in the Western District of Washington. Consequently, this court lacks subject matter jurisdiction over the matter and I dismiss the action without prejudice. Zavialov may continue seeking the adjudication of his naturalization application in the action pending in the Western District of Washington.

CONCLUSION

Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Improper Venue (#7) is granted. This action is dismissed without prejudice.

IT IS SO ORDERED.

Dated this 23rd day of August, 2010.

/s/ Garr M. King
Garr M. King
United States District Judge